IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

Civil Writ Petition No.272 of 2006.

Date of decision: 21.06.2007.

H.P. State Cooperative Marketing & Consumers Federation Ltd. …**Petitioner**

Versus

The Registrar, Cooperative Societies & Others …**Respondents**

Coram

The Hon'ble Mr.Justice Dev Darshan Sud, J.

Whether approved for reporting?[1]

For the Petitioner: **Mr.K.D. Sood, Advocate.**

For Respondents 1 & 2: **Mr.Rajan Dewan, Additional Advocate General.**

For Respondents 3 to 6: **Mr.J.L. Bhardwaj, Advocate.**

For Respondent No.7: **Mr.A.K. Sood, Advocate.**

Dev Darshan Sud, J.

The petitioner, which is a Society Registered under the H.P. Cooperative Societies Act, (hereinafter referred to as the `Act'), is aggrieved by the order of the Deputy Registrar(Administration) Co-operative Societies, Himachal Pradesh, exercising powers under Section 72(1)(b) (Annexure A-1) and respondent No.2 exercising the appellate powers under Section 93 of the Act aforesaid (Annexure A-2).

Respondents No.3 to 6 approached the Registrar, Cooperative Societies, Respondent No.1, with a prayer for

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[1] ***Whether reports of Local Papers may be allowed to see the judgment?***

grant of financial benefits admissible to them under the existing pay scales after their services had been transferred to the HIMFED and that they are entitled to the arrears of the amount claimed. It was contended that their service conditions could not be altered after their services were put at the disposal of the petitioner herein.

On 8.6.1994 the Central Cooperative Consumer Store, Shimla, (where respondents 4 to 6 were employed) was placed under liquidation by the Registrar, Cooperative Societies, as it was running in continuous losses. At the relevant point of time, it was managing about 12 shops at different places in the town. The Liquidator was not in a position to run these Fair Price shops and he approached the petitioner for taking over the Fair Price shops alongwith the staff. This arrangement was accepted by the petitioner herein and an agreement reduced into writing containing the terms. One of the conditions imposed was that the workers, employed by the Society under liquidation, will continue to remain on the pay roll of the Liquidator, but the petitioner will pay the salaries drawn by each worker and will allow to them all the financial benefits admissible to them in the existing pay scale. The case of the respondents before the Registrar was that their demands for DA, ADA, Bonus and other benefits was not accepted by the petitioner and the up-ward revision of pay of H.P. Government Employee which was applicable to the claimants-respondents was also not allowed to them. In these circumstances, a dispute was raised for the

determination of the Registrar under the provisions of Section 72(1)(b) and *(sic)* (92(2)(b)?) of the H.P. Cooperative Societies Act read with Rule 88(1). The Registrar by his impugned order Annexure-A1 allowed the claim of the respondents.

Being aggrieved from the judgment and order of the Registrar, the petitioner appealed under Section 93 of the Act. By its order dated 3.12.2005, the Appellate Authority i.e. Additional Secretary (Cooperation) to the Government of Himachal Pradesh, exercising powers of the Appellate Authority, confirmed the order of the Registrar.

I have heard learned counsel for the parties and have gone through the record.

The matter was heard at length. In stead of a decision being given on the merits of the respective contentions raised by the parties, I find that the order passed by respondent No.2, exercising statutory powers under Section 93 of the Act, is a non-speaking order and deserves to be quashed. It is not disputed before me that the Act governs the rights of the parties and that the order of the Registrar is appealable. What are the duties of Appellate Authority while deciding an appeal? It is now well settled that the Appellate Authority is under a constitutional obligation to pass a speaking order while deciding the matter.

In ***M/s.Travancore Rayons Ltd.*** *vs.* ***The Union of India and Others, AIR 1971 SC 862,*** considering the case of a revision disposed of by the Centre Government under the

Central Excise and Salt Act, 1944 the Hon'ble Supreme Court held:-

> **"7.** … … … … … … … … … … … … *The Central Government is by Section 36 invested with the judicial power of the State. Orders involving important disputes are brought before the Government. The orders made by the Central Government are subject to appeal to this Court under Article 136 of the Constitution. It would be impossible for this Court, exercising jurisdiction under Article 136, to decide the dispute without a speaking order of the authority, setting out the nature of the dispute, the arguments in support thereof raised by the aggrieved party and reasonably disclosing that the matter received due consideration by the authority competent to decide the dispute. Exercise of the right to appeal to this Court would be futile, if the authority chooses not to disclose the reasons in support of the decision reached by it. A party who approaches the Government in exercise of a statutory right, for adjudication of a dispute is entitled to know at least the official designation of the person who has considered the matter, what was considered by him, and the reasons for recording a decision against him. To enable the High Court or this Court to exercise its constitutional powers, not only the decision, but an adequate disclosure of*

materials justifying an inference that there has been a judicial consideration of the dispute by an authority competent in that behalf in the light of the claim made by the aggrieved party, is necessary. If the Officer acting on behalf of the Government chooses to give no reasons, the right of appeal will be devoid of any substance. … … … … … … …

11. *In this case the communication from the Central Government gave no reasons in support of the order; the appellant Company is merely intimated thereby that the Government of India did not see any reasons to interfere "with the order in appeal". The communication does not disclose the "points" which were considered, and the reasons for rejecting them. This is a totally unsatisfactory method of disposal of a case in exercise of the judicial power vested in the Central Government. Necessity to give sufficient reasons which disclose proper appreciation of the problem to be solved, and the mental process by which the conclusion is reached in cases where a non-judicial authority exercises judicial functions, is obvious. When judicial power is exercised by an authority normally performing executive or administrative functions, this Court would require to be satisfied that the decision has been reached after due consideration of the merits of the dispute, uninfluenced by*

> *extraneous considerations of policy or expedience. The Court insists upon disclosure of reasons in support of the order on two grounds: one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the authority to reject his case were erroneous: the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power".*

Similarly, in case of ***Nibaran Chandra Bag*** *vs.* ***Mahendra Nath Ghughu (deceased), after him his heir and legal representative, AIR 1963 SC 1895,*** the Court held:-

> *"It should not however be forgotten that the order passed in an enquiry into an objection filed under S.44(1) of the Act is subject to an appeal under S.44(3) to a prescribed Tribunal as authority. That appeal lies both on the facts as well as on any legal questions which might arise and be decided and is not confined to any particular grounds. It is therefore manifest that the appeal is intended to be a real remedy, affording full relief to the party aggrieved. For such an appeal to be effective, the party aggrieved must be in a position to canvass the propriety and correctness of the reasoning of the tribunal of first instance before the appellate*

authority and it would be obvious that it could not be done satisfactorily unless the party is in possession of the materials on which the conclusions of the first tribunal are based and reasons are recorded for the order. In fact the order of the tribunal cannot normally be successfully impugned unless the materials on which that order is based is placed before the appellate authority. It is therefore apparent that a record of the evidence would be as necessary as a reasoned order – for a statutory right of appeal to be of any real value. We therefore consider that it is implicit in the provision granting an appeal from the order of the revenue officer that even if the rules do not provide, he should so conduct it that the right of appeal granted by the statute is not nullified. In saying this we should not be understood to mean that he is bound to follow the procedure prescribed for civil courts for the recording of evidence. Only he should maintain some record from which the Appellate authority would be able to gather the materials which the officer had before him in arriving at the decision which is the subject of the appeal".

In ***Institute of Chartered Accountants of India*** *vs.* ***L.K. Ratna and others, AIR 1987 SC 71,*** considering the disciplinary proceedings under the Chartered Accountants Act, it was laid down:-

> *"Before we conclude, we may refer to a third point raised before us, the point being whether the Council is obliged to give reasons for its finding that a member is guilty of misconduct. It seems to us that it is bound to do so. In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under S.22 A of the Act. The exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding".*

This is a reiteration of the principles laid down in ***Siemens Engineering and Manufacturing Co.of India Ltd.*** *vs.* ***The Union of India and another, AIR 1976 SC 1785***, where it was held :

*"6. … … … … … … … … … … It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons. … … … … … … … … … …

reasons in support of its order rejecting the revision application".

In ***State of Punjab vs. Bhag Singh, (2004)1 SCC 547,*** it was held:

> ***"6.*** *Reasons introduce clarity in an order. Reasons substitute subjectivity by objectivity. The emphais on recording reasons is that if the decision reveals the "inscrutable face of the sphinx", it can, by its silence, render it virtually impossible for the courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reasons is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind to the matter before court. Another rationale is that the affected party can know why the decision has gone against him. One of the salutary requirements of natural justice is spelling out reasons for the order made, in other words, a speaking-out. The "inscrutable face of a sphinx" is ordinarily incongruous with a judicial or quasi-judicial performance".*
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> *Precedent on the point need not be multiplied as the law is now well settled*

It is undisputed that the respondents are exercising statutory powers under the Cooperative Societies

Act. The order of the Registrar is appealable and the order passed by the Appellate Authority subject to the writ jurisdiction of this court. If this Court is to ascertain the reasons which weighed with the Appellate Authority in deciding the appeal, these should be manifest on the record and cannot be left as a matter of conjecture for this Court. The appellate order woefully lacks reasons. After extracting the facts and one or two paragraphs on the points urged, the entire appeal is disposed of in one paragraph without looking to the points which have been raised regarding the question of admissibility of the pay and monetary dues etc. which had been raised before the Appellate Authority, which was duty bound in law to have considered the points pleaded and urged and to dispose them off with a reasoned decision.

I am also constrained to observe that the Deputy Registrar does not seem to have applied his mind to the facts of the case. He invoked power under Section 94(2)(b) of the Act which are applicable only to review and revision and not in original arbitration proceedings.

In the facts and circumstances of the case, the writ petition is accepted. The order of the Appellate Authority (Annexure A-2) is quashed and set aside with a direction that the matter will be reheard on all the points raised by the petitioner. For this purpose, the parties will appear before the Appellate Authority, Additional Secretary (Cooperation), Government of Himachal Pradesh on ***10th July, 2007***. A further direction is issued that the

entire case will be disposed of by the Appellate Authority within a period of four months and no more from the date when the parties first appear. The directions which have been given by this Court will be observed punctually. Needless to add that the order which will be passed shall be a speaking and reasoned order based on the points urged.

The writ petition is disposed of. There shall be no order as to costs.

June 21, 2007. **(Dev Darshan Sud)**
(aks) **Judge.**